REMARKS

Claims 1-15 are pending in the application. Claims 1, 8 and 15 are the only independent claims. Reconsideration is respectfully requested.

Claims 1-15 were newly-rejected under 35 USC 103(a) as being unpatentable over by US Patent 5,867,483 (Ennis et al.) (previously cited) in view of US Patent 6,484,124 (MacMullen) (newly-cited).

In response to the previous arguments and amendments, the action takes the position that while

(1) "Ennis do not disclose that the information displayed for each test point is specifically the signal to noise ratio at the given test point for each bandwidth",

(2) Ennis "does disclose communication data related to the bandwidth for effective monitoring of performance" and that,

(3) "MacMullen shows information of signal to noise ratio at the given test point for each bandwidth, to present communication data related to the bandwidth for effective monitoring of performance" and that,

(4) it would therefore "have been obvious....to have this in Ennis, because it would allow effective monitoring of performance in a communication related device".

The rejection based on the alleged combination of teachings of Ennis and MacMullen is respectfully traversed and reconsideration is requested.

Independent Claim 1 is directed to an apparatus for graphically presenting information representative of the operation of a communication system to a user monitoring the performance of the system, comprising a graphical user interface that simultaneously displays information representative of the operation of the system at a plurality of test points to the user. The graphical user interface displays a plurality of different bandwidths simultaneously presented to the user for each of the test points, and for each of the plurality of different bandwidths, for each of the plurality of test points, the graphical user interface displays *information representative of the signal-to-noise ratio at the given test point for each bandwidth* and a graphical image representative of the operation of the system at the given test point for each bandwidth. Independent Claims 8 and 15 recite similar limitations.

As acknowledged in the Action, *Ennis fails to teach or suggest* the simultaneous display of both information *representative of the signal-to-noise ratio* and graphical images representative of the status of operation, for each of the plurality of bandwidths for each test point. Specifically, as described at least at page 4, lines 5-9 of Applicants' specification, for "each of the plurality of bandwidths 18 associated with each of the plurality of test points 14, a graphical image 22 representative of the signal-to-noise ratio at the given test point and bandwidth is presented to the user 20". Lines 15-18 of page 4 continue, "for each of the plurality of bandwidths 18 associated with each of the plurality of test points 14, a graphical image 24 representative of the status of operation of the system 10 is presented to the user 20...[t]he graphical image 24 is presented in the form of a color".

Ennis is directed simply to a method for measuring and displaying peak throughput in data transmission systems 'to assess bandwidth utilization for an entire access channel or individual transmission circuits' (col. 1, lines 11-12) – i.e., to display the *percentage of bandwidth utilized* over a predetermined time interval in graphical form *showing periods of high and low bandwidth utilization.*

MacMullen is directed to measuring performance characteristics of microwave power components, using a rotating phase reference technique to improve measurement (abst.). MacMullen does *not* teach or suggest an apparatus for graphically presenting information representative of the operation of a communication system in which a graphical user interface displays a plurality of different bandwidths simultaneously presented to the user for each of the test points, and *for each of the plurality of different bandwidths*, for each of the plurality of test points, the graphical user interface displays *information representative of the signal-to-noise ratio at the given test point for each bandwidth*.

Applicants therefore respectfully submit that MacMullen fails to provide even the requisite teaching of the element acknowledged to be missing from Ennis.

In addition, the alleged 'obvious' combination of supposed teachings of Ennis and MacMullen is also traversed. Of course, the motivation to modify or combine the teachings of prior art must flow from some teaching in the art that suggests the desirability or incentive to make the modification needed to arrive at the claimed invention. In re Napier, 34 USPQ2d 1782, 1784 (Fed. Cir. 1995). Obviousness cannot be established by combining the teachings of the

prior art to produce the claimed invention, absent some teaching, suggestion or incentive supporting the combination. That is, "the mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification." In re Laskowski, 10 USPQ2d 1397, 1399 (Fed. Cir. 1989).

In this regard, the Federal Circuit has repeatedly warned that the requisite motivation must come from the prior art and not Applicants' specification. In re Dow Chem. Co., 5 USPQ2d 1529, 1531-32 (Fed. Cir. 1988). For instance, when an invention is directed to a combination of elements, both the Federal Circuit and the Board have consistently reversed rejections found on references merely showing that the claimed elements or subcombinations of the claimed elements were known. Rather, to support a conclusion of obviousness, either the references must expressly or impliedly suggest the claimed combination or the Office Action must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references. Here, Ennis and MacMullen, at least, plainly fail to suggest the claimed combination.

In addition to the comments presented above, Applicants respectfully submit that it is, of course, improper for the Examiner to *pick and choose elements* from several references in order to "build" an obviousness rejection, when such a combination would not in fact have been obvious to one of ordinary skill in the art. Further, it is impermissible to use an Applicants' specification as an instruction manual or "road map" to piece together the teachings of the prior art in order to render claims obvious. The *only* suggestion for combining even the *alleged* teachings of Ennis and MacMullen in the manner suggested by the Examiner is found in the luxury of the hindsight accorded one who first viewed Applicants' disclosure, which of course, is not a proper basis for a rejection.

For at least the foregoing reasons, Applicants respectfully submit that each of independent Claims 1, 8 and 15, are patentable over any permissible combination of the teachings of Ennis and MacMullen and prompt and favorable reconsideration are respectfully requested.

Each of dependent Claims 2-7 and 9-14 are is believed patentable over Ennis and MacMullen for at least the same reasons as submitted above with respect to the independent claims from which they respectively depend and as reciting additional patentable limitations.

It is respectfully submitted that in regard to the above remarks that Claims 1-15 are in condition for allowance. Should the Examiner be of the view that an interview would expedite consideration of this Response or of the application at large, request is made that the Examiner telephone the Applicants' undersigned attorney at (908) 518-7700 in order that any outstanding issues be resolved.

Respectfully submitted,

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